

**Testimony**  
**PSC Chair Greg Jergeson**  
In opposition to  
**House Bill 597**  
February 18, 2009

Chairman Noonan and members of the Committee:

The PSC has voted four to one to oppose HB 597. This bill introduces ambiguity into the statute, attempts to allow customers to exempt themselves from the effect of portions of federal and state law, may lead to substantially higher rates for all customers, and imposes unreasonably short time frames on the Commission for implementation. The reasons for the Commission's opposition are as follows:

- Sections 2 and 8 of the bill, taken together, introduce ambiguity into the Title 69, chapter 8. This bill adds a section of definitions to Title 69, chapter 8. However § 69-8-103 already contains definitions applicable to chapter 8. In the case of the definition of "public utility" the definitions are different.
- Section 2 of the bill defines two mutually exclusive portfolios of resources, nontraditional and traditional. The nontraditional portfolio includes qualifying small power production facilities (QFs), eligible renewable resources, customer-generators, and peaking facilities. The traditional portfolio includes coal generators (other than QFs), hydroelectric facilities larger than 10 megawatts, and a non-peaking natural gas facility. Section 3 of the bill allows customers to choose to purchase from the traditional or nontraditional portfolio. In effect this allows a customer to choose to purchase power that does not include any purchases from QFs or eligible renewable resources. However, the utility is required by the federal Public Utility Regulatory Policies Act, Title 69, Chapter 3, Part 6, MCA, and the Montana Renewable Power Production and Rural Economic Development Act to purchase such power. Customers choosing to purchase from the traditional portfolio would effectively exempt themselves from the effect of these laws. The Commission does not believe that this legislature may allow customers to exempt themselves from federal law.
- Section 3 of the bill appears to allow customers to change the portfolio from which they purchase every year. Such a situation will greatly complicate the utility's ability to plan and acquire a portfolio. In cases before the Commission, NorthWestern Energy has stated that before passage of House Bill 25 in 2007, it was impossible for it to enter into long-term contracts for electricity because it did not know if it would have load to serve with those contracts. A utility also could not acquire its own generation if it did not have some degree of load certainty. By dividing a utility's load into two portfolios and allowing customers to move between them annually, this bill drastically reduces the ability of the utility to forecast load and acquire long-term resources. Reliance on short-term resources will result in higher rates for consumers.

- All utilities need some sort of peaking resource to handle those periods when load is far greater than average. The traditional portfolio does not include any peaking resources. This is operationally unsound. The only apparent solution is for the portfolio to have base load resources to meet its requirements and sell excess power at all times that it is not needed. There is no assurance that the market price will exceed the cost of production in these off-peak periods. Traditional portfolio customers would be required to make up any difference, resulting in higher rates.
- Both Title 69, chapter 8 and Title 69, chapter 3, part 7 recognize the benefit and value of demand side resources, including conservation and energy efficiency, neither portfolio includes such resources.
- NorthWestern has procured a portfolio of resources. Some of these resources would fit into the traditional portfolio; other would fit into the nontraditional portfolio. To the extent that not enough customers choose a portfolio to use all of the resources in that portfolio, the utility would be able to sell the power on the open market. If those sales are not adequate to recovery the utility's costs, Montana ratepayers would be required to pay the stranded costs – higher rates for all customers.
- Finally, the bill appears to be impossible to administer in the given time frames and would significantly increase the Commission's work load. Assuming that the bill was passed and signed by March 15<sup>th</sup>, the utility and Commission would have only 6½ months to develop portfolios and provide customers an option. The Commission's experience in integrated resource planning and electricity supply procurement planning demonstrates that this is an impossible time restraint. Likewise, the bill requires the Commission to adopt rules in a very short time frame, by September 1, 2009. Additionally, for every resource planning case the Commission now has, it will have two in the future. For every existing resource rate case, it will have two. Other dockets, particularly QF dockets would become more complex to administer.

For these reasons, the PSC recommends that you give HB 597 a do not pass.